



DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 409, 410, 414, 424, 484, 488, and 489

[CMS-1780-CN]

RIN 0938-AV03

Medicare Program; Calendar Year (CY) 2024 Home Health (HH) Prospective Payment System Rate Update; HH Quality Reporting Program Requirements; HH Value-Based Purchasing Expanded Model Requirements; Home Intravenous Immune Globulin Items and Services; Hospice Informal Dispute Resolution and Special Focus Program Requirements, Certain Requirements for Durable Medical Equipment Prosthetics and Orthotics Supplies; and Provider and Supplier Enrollment Requirements; Correction

AGENCY: Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS).

ACTION: Final rule; correction.

SUMMARY: This document corrects technical errors in the final rule that appeared in the November 13, 2023 **Federal Register** titled “Medicare Program; Calendar Year (CY) 2024 Home Health (HH) Prospective Payment System Rate Update; HH Quality Reporting Program Requirements; HH Value-Based Purchasing Expanded Model Requirements; Home Intravenous Immune Globulin Items and Services; Hospice Informal Dispute Resolution and Special Focus Program Requirements, Certain Requirements for Durable Medical Equipment Prosthetics and Orthotics Supplies; and Provider and Supplier Enrollment Requirements” (referred to hereafter as the “CY 2024 HH PPS final rule”).

DATES: *Effective date:* This correcting document is effective [Insert date of publication].

FOR FURTHER INFORMATION CONTACT:

For questions about the Home Health Quality Reporting Program (HH QRP), send your inquiry via email to HHQRPquestions@cms.hhs.gov.

For questions about the expanded Home Health Value-Based Purchasing Model, please visit the Expanded HHVBP Model webpage at <https://innovation.cms.gov/innovation-models/expanded-home-health-value-based-purchasing-model>; send your inquiry via email to HHVBPquestions@cms.hhs.gov; or call Marcie O'Reilly at (410) 786-9764.

For questions about the hospice informal dispute resolution send inquiries to QSOG_Hospice@cms.hhs.gov, and for the special focus program, send your inquiry to CMS_HospiceSFP@cms.hhs.gov, or call Thomas Pryor at (410) 786-1332.

SUPPLEMENTARY INFORMATION:

I. Background

This correcting document identifies and corrects errors in FR Doc. 2023-24455 of November 13, 2023 (88 FR 77676). The corrections in this correcting document are effective January 1, 2024, as if they had been included in the document that appeared in the November 13, 2023, **Federal Register**.

II. Summary of Errors

On pages 77680, 77761, 77767, and 77851 in our discussion of the Home Health Quality Reporting Program (HH QRP), we made several typographical errors.

On pages 77778 and 77779, in a table regarding the proposed measures for the Home Health Value-Based Purchasing Model (HHVBP), we made typographical and technical errors.

On pages 77801, 77802, and 77807, in our discussion of the Hospice Informal Dispute Resolution and Special Focus Program, we made several typographical and technical errors.

We are correcting these errors in section IV. of this correcting document.

III. Waiver of Proposed Rulemaking and Delay in Effective Date

Under 5 U.S.C. 553(b) of the Administrative Procedure Act (APA), the agency is required to publish a notice of the proposed rulemaking in the **Federal Register** before the

provisions of a rule take effect. Similarly, section 1871(b)(1) of the Social Security Act (the Act) requires the Secretary to provide for notice of the proposed rulemaking in the **Federal Register** and provide a period of not less than 60 days for public comment. In addition, section 553(d) of the APA, and section 1871(e)(1)(B)(i) of the Act mandate a 30-day delay in effective date after issuance or publication of a rule. Sections 553(b)(B) and 553(d)(3) of the APA provide for exceptions from the notice and comment and delay in effective date APA requirements; in cases in which these exceptions apply, sections 1871(b)(2)(C) and 1871(e)(1)(B)(ii) of the Act provide exceptions from the notice and 60-day comment period and delay in effective date requirements of the Act as well. Section 553(b)(B) of the APA and section 1871(b)(2)(C) of the Act authorize an agency to dispense with normal rulemaking requirements for good cause if the agency makes a finding that the notice and comment process are impracticable, unnecessary, or contrary to the public interest. In addition, both section 553(d)(3) of the APA and section 1871(e)(1)(B)(ii) of the Act allow the agency to avoid the 30-day delay in effective date where such delay is contrary to the public interest and an agency includes a statement of support.

We believe that this final rule correction does not constitute a rule that would be subject to the notice and comment or delayed effective date requirements. This document corrects technical errors in the preamble of the CY 2024 HH PPS final rule but does not make substantive changes to the policies or payment methodologies that were adopted in the final rule. As a result, this final rule correction is intended to ensure that the information in the CY 2024 HH PPS final rule accurately reflects the policies adopted in that document.

In addition, even if this were a rule to which the notice and comment procedures and delayed effective date requirements applied, we find that there is good cause to waive such requirements. Undertaking further notice and comment procedures to incorporate the corrections in this document into the final rule or delaying the effective date would be contrary to the public interest because it is in the public's interest for providers to receive information regarding the relevant Medicare payment policy in as timely a manner as possible, and to ensure that the CY

2024 HH PPS final rule accurately reflects our policies. Furthermore, such procedures would be unnecessary, as we are not altering our payment methodologies or policies, but rather, we are simply implementing correctly the methodologies and policies that we previously proposed, requested comment on, and subsequently finalized. This final rule correction is intended solely to ensure that the CY 2024 HH PPS final rule accurately reflects these payment methodologies and policies. Therefore, we believe we have good cause to waive the notice and comment and effective date requirements. Moreover, even if these corrections were considered to be retroactive rulemaking, they would be authorized under section 1871(e)(1)(A)(ii) of the Act, which permits the Secretary to issue a rule for the Medicare program with retroactive effect if the failure to do so would be contrary to the public interest. As we have explained previously, we believe it would be contrary to the public interest not to implement the corrections in this final rule correction for changes effective on January 1, 2024, because it is in the public's interest for providers to receive information regarding the relevant Medicare payment policy in as timely a manner as possible, and to ensure that the CY 2024 HH PPS final rule accurately reflects our policies.

IV. Correction of Errors

In FR Doc. 2023-24455 of November 13, 2023 (88 FR 77676), make the following corrections:

1. On page 77680, top of the page, the table titled “Table A1: Summary of Costs, Transfers, and Benefits”, second row (HH QRP), third column (Transfers), line 6, the phrase “M2220- Therapy Needs” is corrected to read “M2200- Therapy Need”.
2. On page 77761, first column, second full paragraph, line 6, the date "April 1, 2024" is corrected to read "April 1, 2023”.
3. On page 77767, in the third column,
 - a. First partial paragraph, line 7, the date "April 1, 2024" is corrected to read "April 1, 2023".

b. First full paragraph, line 6, the date "April 1, 2024" is corrected to read "April 1, 2023".

4. On page 77778, in the table titled “TABLE D2: PROPOSED MEASURE SET FOR THE EXPANDED HHVBP MODEL”, columns 3 (Numerator) and 4 (Denominator) for the listed entries are corrected to read as follows:

TABLE D2: PROPOSED MEASURE SET FOR THE EXPANDED HHVBP MODEL

Measure Full Title/Short Form Name (if applicable) *****	Measure Type	Data Source	Numerator	Denominator	Current	Proposed
Home Health Within-Stay Potentially Preventable Hospitalization/PPH ³	Outcome	CCW (Claims)	The risk-adjusted prediction of the number of HH stays with at least one potentially preventable hospitalization (that is, in an ACH/LTCH) or observation stay. For PPH, an HH stay is a sequence of HH payment episodes separated by 2 or fewer days. A separation between HH payment episodes greater than 2 days results in separate HH stays.	The risk-adjusted expected number of hospitalizations or observation stays. This estimate includes risk adjustment for patient characteristics with the HHA effect removed. The “expected” number of hospitalizations or observation stays is the projected number of risk-adjusted hospitalizations or observation stays if the same patients were treated at the average HHA appropriate to the measure. Numerator over denominator times the national observed PPH rate equals the reported risk-standardized rate.		X
Discharge to Community/DTC-PAC ⁴	Outcome	CCW (Claims)	The risk-adjusted estimate of the number of HH stays resulting in a discharge to the community (Patient Discharge Status codes equal to 01 or 81), without an unplanned admission to an ACH/LTCH or death in the 31-day post-discharge observation window. For DTC-PAC, an HH stay is a sequence of HH payment episodes separated by 2 or fewer days. A separation between HH payment episodes greater than 2 days results in separate HH stays.	The risk-adjusted expected number of discharges to community. This estimate includes risk adjustment for patient characteristics with the HHA effect removed. The “expected” number of discharges to community is the predicted number of risk-adjusted discharges to community if the same patients were treated at the average HHA appropriate to the measure. Numerator over denominator times the national observed DTC-PAC rate equals the reported risk-standardized rate.		X

Notes:

³<https://www.cms.gov/files/document/hh-qrp-specificationspotentiallypreventablehospitalizations.pdf>

⁴<https://www.cms.gov/files/document/home-health-outcome-measures-table-oasis-e2023.pdf>

5. On page 77779, following the table titled “Table D2: Proposed Measure Set for the Expanded HHVBP Model”, table note 3 “³<https://www.cms.gov/files/document/hh-qrp-specificationspotentiallypreventablehospitalizations.pdf>” is corrected to read “³

measures-table-oasis-e2023.pdf”.

6. On page 77801, first column, first partial paragraph, line 4, the phrase “the iQIES).” is corrected to read “the iQIES.”.

7. On page 77802,

a. First column, first full paragraph, line 32, the phrase “‘Sometimes’;” is corrected to read “‘Sometimes’.”.

b. Second column, first full paragraph, line 11, the phrase “top-box option: 9-10)” is corrected to read “top-box options: 9-10)”.

8. On page 77807, second column, second full paragraph, line 5, the term “BBVs” is corrected to read “bottom-box scores”.

9. On page 77851, top half of the page, first column, sixth full paragraph, lines 6 and 7, the date “April 1, 2024” is corrected to read “April 1, 2023,”.

Elizabeth J. Gramling,

Executive Secretary,

Department of Health and Human Services.

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